

# FOR PUBLICATION

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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

Darren D. Pynn,

CHAPTER 7

Case No.: 2:14-bk-28537-TD

Adv No.: 2:15-ap-01125-TD

**MEMORANDUM DECISION**

Debtor.

United States Trustee,

Trial Date: January 28, 2016

Time: 10:00 a.m.

Courtroom: 1345

Plaintiff,

vs.

Darren D. Pynn,

Defendant.

**INTRODUCTION**

The United States Trustee (Plaintiff) filed a timely adversary seeking denial of Darren Pynn's (Debtor) discharge pursuant to 11 U.S.C. §§ 727(a)(4)(A) and 727(a)(2)(A). The adversary was tried on January 28, 2016, by written declaration and cross-examination of witnesses. At the conclusion of trial, the court announced a brief oral preliminary ruling denying Debtor a discharge based on the evidence. This memorandum supplements the court's ruling and is the final order of the court.

1 **FACTS**

2 Debtor filed a chapter 7 bankruptcy petition on September 29, 2014. In his  
3 Schedule B, Debtor listed various personal assets including a 1966 Porsche 911  
4 (Porsche) and multiple guitars and bicycles. Debtor's Schedule B reflected that the  
5 value of the Porsche was \$5,000, the collective value of the guitars was \$2,750, and the  
6 collective value of the bicycles was \$2,600. In his Schedule C, Debtor claimed all these  
7 assets as exempt pursuant to California Code of Civil Procedure § 703.140(b). The  
8 exemptions claimed were almost dollar for dollar the amounts at which Debtor listed  
9 each of the above assets.  
10

11  
12 Prior to Debtor's chapter 7 petition, Wells Fargo Bank obtained a judgment  
13 against Debtor. The outstanding judgment totals about \$185,000. Debtor testified that  
14 he attempted to settle with Wells Fargo for mere pennies on the dollar and that all his  
15 attempts failed.

16 On November 5, 2014, at the request of Wells Fargo, Bendis Companies  
17 performed an appraisal of Debtor's personal items listed above. According to the  
18 appraisal, the Porsche was in very clean condition with a few minor paint chips and  
19 minor upholstery damage and had a value between \$20,000 and \$45,000, depending  
20 on the amount of work required to achieve road readiness. Collectively, Bendis  
21 Companies valued Debtor's bicycles at \$7,710 and his guitars at \$6,200. Based on  
22 these appraisals, the evidence established that Debtor significantly undervalued the  
23 Porsche, bicycles and guitars in his schedules.  
24

25  
26 The United States Trustee conducted a meeting of creditors (341(a) meeting) on  
27 November 7, 2014. Debtor testified under oath during the 341(a) meeting that he read  
28 and reviewed his bankruptcy papers carefully before he signed them and that his

1 schedules and statement of financial affairs were true and correct. At the same time, he  
2 acknowledged that he needed to amend Schedule B to add four amplifiers, a drum set  
3 and one folding bicycle that he had previously overlooked.

4           During the 341(a) meeting, Brad Krasnoff (chapter 7 trustee) asked Debtor how  
5 he valued the Porsche. Debtor testified that \$5,000 is what he paid for it and “what it’s  
6 really worth to me at this point,” adding, “. . . I figured I could just roll it out in the  
7 driveway, put a sign [on] it and [it was] what I could sell it for in a heartbeat.” When  
8 questioned by the Wells Fargo attorney, Debtor testified that he valued the bicycles and  
9 guitars in the same way. Debtor’s testimony at trial regarding valuation was consistent  
10 with his stipulated testimony as set forth in the Joint Pretrial Order. He valued all these  
11 assets based on “yard-sale” type or “quick sale” liquidation prices.  
12

13  
14           When further interviewed at his 341(a) meeting by Tayo Agboke (Agboke), the  
15 United States Trustee’s bankruptcy auditor, Debtor admitted he had stated below-  
16 market values for the bicycles and guitars on his Schedule B. Debtor acknowledged  
17 that the bicycles would sell for between \$5,350 to \$7,450 on eBay, as opposed to the  
18 \$2,600 represented in his Schedule B. Debtor likewise testified that the guitars, if sold  
19 on eBay, would sell for between \$5,500 to \$6,400, as opposed to the \$2,750  
20 represented in his Schedule B.  
21

22           Debtor filed an Amended Schedule B on November 18, 2014, to add the items  
23 that he failed to list previously, but Debtor left the values of his guitars, bicycles and  
24 Porsche unchanged.  
25

26           The chapter 7 trustee ultimately sold the Porsche at an auction to Carr  
27 Acquisitions for \$83,000 on January 14, 2015. An order approving the sale was entered  
28 on January 16, 2015. Later, the chapter 7 trustee agreed to sell the bicycles to Debtor

1 for \$5,450. In a separate transaction, the chapter 7 trustee sold the guitars and other  
2 musical equipment to Debtor for \$3,900. An order was entered May 12, 2015,  
3 approving these sales.

4           The evidence demonstrates that Debtor significantly undervalued the Porsche.  
5 The auction sale proceeds prove that Debtor grossly undervalued the Porsche.  
6 Debtor's Schedule B and Amended Schedule B put the value of Porsche at \$5,000,  
7 which is \$78,000 less than the sale price at auction. The auction generated 1,560%  
8 more than the value Debtor stated.  
9

10           The evidence shows that Debtor undervalued the bicycles. On his Amended  
11 Schedule B, Debtor valued the bicycles at \$2,600, which is \$2,850 less than the price at  
12 which Debtor himself later re-purchased the bicycles from the bankruptcy estate. As  
13 stated earlier, Debtor admitted at the 341(a) meeting that the bicycles had a total value  
14 of approximately \$5,350 to \$7,450, "if marketed."  
15

16           The evidence shows that Debtor undervalued the guitars. On his Amended  
17 Schedule B, Debtor listed the guitars and other musical equipment as having a total  
18 value of \$2,750, which is \$1,150 less than the price at which Debtor re-purchased those  
19 guitars from the estate. As Debtor admitted at the 341(a) meeting, the total  
20 approximate value of the guitars was \$5,500 to \$6,400, "if marketed."  
21

22           Considering the totality of the evidence in this case, the court finds that Debtor, in  
23 his Schedule B and Amended Schedule B, intentionally undervalued the above  
24 mentioned property, knowingly and fraudulently, with the intent to deceive his creditors.  
25 In doing so, Debtor made false oaths in his schedules in violation of 11 U.S.C. §  
26 727(a)(4)(A). It is inconceivable that Debtor did not know the true (or at least more  
27 accurate) values for his assets when he signed his schedules under oath. Debtor  
28

1 testified during the trial that he was a “hobbyist” and was “meticulous” about his  
2 collections. He testified he had been collecting, riding and enjoying bikes for over 30  
3 years. Debtor was an avid eBay user and had extensive experience purchasing items  
4 on eBay. Debtor’s receipts show that Debtor had made numerous purchases on eBay.  
5 Debtor kept careful records of his bicycles and guitars at the time of his purchases and  
6 prepared detailed and comprehensive itemizations listing not just the bicycles and  
7 guitars but many of their component parts. He testified at trial that he attended Porsche  
8 car shows in 2004 and 2005. Debtor admitted at trial that he “might have” looked up the  
9 Porsche’s value on eBay at some point to ascertain its value. The evidence persuades  
10 the court that Debtor knew that the true (or at least more accurate) values of his assets  
11 listed in his schedules were significantly higher than stated; he consciously chose not to  
12 list values more closely related to their true market value.  
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14

15 Debtor testified under oath at the trial in response to cross-examination and on  
16 redirect. Plaintiff’s exhibits and the extracts of Debtor’s 341(a) meeting and deposition  
17 testimony were admitted into evidence by stipulation of the parties. As stated on the  
18 record at the end of the trial, the court found Debtor’s testimony, including his  
19 explanation for why he substantially undervalued his assets, to be not credible,  
20 especially in light of the extensive documentary evidence introduced in this case by the  
21 Plaintiff.  
22

23 The record in this adversary is voluminous. To assist the reader, the court  
24 provides below a list of some important documents filed with the court that may simplify  
25 the task of reviewing the record in this case. The court incorporates herein the following  
26 documents filed in the record of this adversary proceeding:  
27  
28

1 Joint Pretrial Order – Doc. 13

2 Trial Setting Order – Doc. 14

3 Notice of Errata re: Brad Krasnoff Declaration (especially, 341(a) meeting of  
4 creditors, November 7, 2014, Krasnoff examination of Debtor, 10:15-18; 11:16-  
5 22) – Doc. 25

6 Request for Judicial Notice for Trial (which the court hereby grants) – Doc. 33

7 Motion in Limine of Plaintiff (which the court granted in large part as discussed on  
8 the record) – Doc. 34

9 United States Trustee’s Notice of Lodging of Marked Pages of Transcripts of  
10 Pynn’s Testimony on November 7, 2014 at 341(a) Meeting of Creditors  
11 (especially, Agboke examination of Debtor, 22:6-8, 24:18-22; 26:18–27:9; 28:14-  
12 17; 32:13-19) – Doc. 40

13 Plaintiff’s Evidentiary Objections to Declaration of Pynn (the court’s evidentiary  
14 rulings were announced at trial) – Doc. 30

15 The court hereby adopts the United States Trustee’s Findings of Fact as modified  
16 by the court and entered on the docket – Doc. 43

17 **DEBTOR’S DISCHARGE IS DENIED PURSUANT TO 11 U.S.C. § 727(a)(4)(A)**

18 Pursuant to 11 U.S.C. § 727(a)(4)(A), the court shall grant a discharge unless the  
19 debtor knowingly and fraudulently, in or in connection with the case, made a false oath  
20 or account. To prevail on his claims, Plaintiff must prove by a preponderance of the  
21 evidence that (1) Debtor made a false statement or omission, (2) regarding a material  
22 fact, and (3) did so knowingly and fraudulently. Khalil v. Developers Sur. & Indem. Co.  
23 (In re Khalil), 379 B.R. 163, 172 (9th Cir. BAP 2007), *aff’d* 578 F.3d 1167 (9th Cir. 2009)  
24 (citing Searles v. Riley (In re Searles), 317 B.R. 368, 377 (9th Cir. BAP 2004)).

25 Discharge provisions are liberally construed in favor of debtors and strictly against the  
26 person objecting to the discharge. See Beauchamp v. Hoose (In re Beauchamp), 236  
27 B.R. 727, 730 (9th Cir. BAP 1999), *aff’d* 5 Fed.Appx. 743 (9<sup>th</sup> Cir. 2001).  
28

1                    **Debtor made false statements and omissions.**

2                    A false statement or an omission in the debtor's bankruptcy schedules or  
3 statement of financial affairs can constitute a false oath. In re Khalil, 379 B.R. at 172.  
4 "The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors  
5 have accurate information without having to conduct costly investigations." Id. (citations  
6 omitted). Schedules call for the truth and an accurate itemization of the debtor's assets  
7 and of the values of debtor's assets. "The requisite false oath may involve either an  
8 affirmatively false statement or an omission from the debtor's schedules." In re Searles,  
9 317 B.R. at 377.  
10

11                    A false oath is complete when made. Id. (citations omitted). When Debtor filed  
12 under oath his Schedule B on September 29, 2014, and his Amended Schedule B on  
13 November 18, 2014, he represented that the value of his Porsche was \$5,000, the  
14 bicycles collectively were worth \$2,600, and the guitars were collectively worth \$2,750.  
15 Each of these values was false. Each of these false values was material.  
16

17                    Numerous errors and omissions in schedules can qualify as false oaths under §  
18 727(a)(4)(A). Retz v. Samson, et al. (In re Retz), 606 F.3d 1189, 1197 (9th Cir. 2010);  
19 see also In re Khalil, 379 B.R. at 172. Debtor testified at trial that he made a simple  
20 mistake regarding valuation in using quick sale values instead of true market values.  
21 Debtor's claim in that regard was self-serving and not credible, especially in light of  
22 Plaintiff's documentary evidence derived from Debtor's records that demonstrated  
23 Debtor's detailed knowledge of what he owned. It was not credible, given Debtor's  
24 attention to detail and intense interest in his collection of assets, that he did not know  
25 more accurate values for his assets when he prepared his schedules. Debtor's  
26 testimony at the 341(a) meeting regarding sale of his assets on eBay establishes that  
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28

1 he knew their fair market values, or, at the least, that their values were significantly  
2 higher than asserted in his schedules. Debtor filed his Amended Schedule B after  
3 attending the 341(a) meeting and admitting the market values were higher, but his later  
4 amendments did not reflect higher, more accurate values.

5  
6 When schedules reflect an offending oath, a debtor has a continuing duty to  
7 assure the accuracy of his schedules; the proper method of correction is a formal  
8 amendment of the schedules. In re Searles, 317 B.R. at 377. In Searles, the court  
9 determined that an unfiled letter to the trustee did not suffice to exonerate the debtor.  
10 Debtor's testimony at the 341(a) meeting regarding the eBay values was not sufficient  
11 to correct the errors on his Schedule B "because [such testimony] is not in the plain  
12 view of the parties in interest who should be entitled to rely on the accuracy of the  
13 court's official file." Id. Debtor's persistent listing of low-ball values in his schedules  
14 constitutes persuasive evidence that he made false statements under oath, knowingly  
15 and fraudulently.

16  
17  
18 **The false statements and omissions regarding the value of his  
personal property were material.**

19 The relevant false oath must relate to a material fact. In re Retz, 606 F.3d at  
20 1198 (citing Roberts v. Erhard (In re Roberts), 331 B.R. 876, 882 (9th Cir. BAP 2005),  
21 *aff'd* 214 Fed.Appx. 420 (9th Cir. 2007)). A fact is material if it bears a relationship to  
22 the debtor's estate, or concerns the discovery of assets, or the existence and  
23 disposition of the debtor's property. In re Kahlil, 379 B.R. at 173. "An omission or  
24 misstatement that 'detrimentally affects administration of the estate' is material." In re  
25 Retz, 606 F.3d at 1198 (quoting Fogal Legware of Switzerland, Inc. v. Sheldon and  
26 Joan Willis (In re Willis), 243 B.R. 58, 63 (BAP 9<sup>th</sup> Cir. 1999)).  
27  
28

1 Here, Debtor approached his bankruptcy schedules seemingly with the idea of  
2 persuading his creditors that these assets were of no value to creditors because they  
3 were, cumulatively, worth less than the statutory exemptions to which the Debtor was  
4 entitled. That is, Debtor's filing would result in a "no asset" chapter 7 case with no  
5 recovery for creditors. Although Debtor did not conceal the assets themselves, it is  
6 clear from the evidence that he knowingly and fraudulently attempted to conceal their  
7 true values. Based on evidence from the actual sales of Debtor's assets in this case,  
8 Debtor concealed at least \$78,000 worth of value in the Porsche and \$4,000 worth of  
9 value in the bikes and guitars. This is a total of \$82,000. This is a significant amount of  
10 value that Debtor attempted to hide from his creditors; the concealment adversely  
11 affected the administration of this estate. Debtor was obligated to state realistic values  
12 of his assets, especially given his obviously intense interest in his bicycles, guitars and  
13 Porsche as an admittedly long term hobbyist and collector, an active eBay user and  
14 Porsche car show attendee, all as the record establishes.

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16  
17  
18 **Debtor knowingly and fraudulently made false statements and omissions regarding the value of his personal property.**

19 Proof of actual intent of fraud is required. In re Roberts, 331 B.R. at 884 (a false  
20 statement resulting from ignorance or carelessness does not rise to the level of  
21 "knowing and fraudulent."). Debtor must have "knowingly" and "fraudulently" made a  
22 false oath or account. In re Khalil, 379 B.R. at 173. Debtor acts knowingly if he acts  
23 deliberately and consciously. Id. "Recklessness does not meet the statutory  
24 requirements of knowing misconduct." Id. (citing In re Roberts, 331 B.R. at 884).  
25 However, recklessness, including reckless indifference or disregard for the truth, can be  
26 probative of fraudulent intent. See In re Khalil, 379 B.R. at 173-75.  
27  
28

1 As for acting fraudulently, the court in Roberts held that the elements of common  
2 law fraud substantially overlap the elements of a claim under § 727(a)(4)(A), except that  
3 materiality replaces the elements of reliance and proximately caused damage, so that  
4 the creditor [or Plaintiff] must show: (1) [that] Debtor made representations [e.g., a false  
5 statement or omission in bankruptcy schedules]; (2) that at the time he knew were false;  
6 and (3) that he made them with the intention and purpose of deceiving creditors. In re  
7 Khalil, 379 B.R. at 173.

9 Debtor's claim that he made an honest mistake in his method for valuation of  
10 personal assets was simply not credible. When Debtor filed his Schedule B on  
11 September 29, 2014, and his Amended Schedule B on November 18, 2014, he  
12 deliberately and consciously made representations of the value of his Porsche, bicycles  
13 and guitars that he knew were false. He undervalued the property with the intention and  
14 purpose of deceiving his creditors through the stratagem of low-ball statements of value  
15 that, for Debtor, fit neatly, albeit falsely, into the California exemption scheme.  
16

17 The fact that Debtor testified to some correct fair market values at his 341(a)  
18 meeting and cooperated with various participants in the bankruptcy case does not  
19 negate his conscious act of undervaluing the property on his original Schedule B and  
20 his Amended Schedule B. The court concludes that Debtor acted deliberately and  
21 consciously when he filed the Schedule B and Amended Schedule B and failed to  
22 include credible, more accurate values for his assets. It is clear from his testimony at  
23 the 341(a) meeting that Debtor was aware that he listed incorrect values for his bicycles  
24 and guitars in his Schedule B. Despite this knowledge, Debtor failed to correct his  
25 Amended Schedule B. Debtor's failure to amend his schedules promptly and accurately  
26 upon noting the discrepancies supports the court's inference that Debtor acted with  
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28

1 wrongful intent, knowingly and fraudulently. See In re Searles, 317 B.R. at 377.

2 Debtor claims he valued the Porsche at \$5,000 because of his “complete  
3 ignorance of its value.” The court does not believe that Debtor was ignorant of the  
4 Porsche’s value. Debtor must have had a reasonably good idea of the true value of the  
5 Porsche. He purchased the Porsche in 2003 and attended Porsche car shows in 2004  
6 and 2005. He paid close to \$4,000 for repairs after he purchased the car. At a  
7 minimum, he must have believed the Porsche had a value of at least \$9,000. Bendis  
8 Companies valued the Porsche at \$20,000 to \$45,000 even though the car was not  
9 operable at the time of the Bendis appraisal. The court-supervised auction of the  
10 Porsche went forward with an opening bid of \$50,000. The winning bid for the Porsche  
11 was \$83,000, a sale price that demonstrates the utter lack of credibility of the  
12 statements Debtor made under oath.  
13

14  
15 The evidence establishes that Debtor must have known the Porsche was worth  
16 more. Debtor regularly purchased items on eBay. He was familiar with eBay values  
17 and even went so far as to admit that he “might have” looked up the Porsche’s value on  
18 eBay at some point to ascertain its value.  
19

20 Further evidence of Debtor’s intent to deceive was the fact that he valued his  
21 other vehicle, a 2008 Honda Fit, at fair market value, not a quick sale, liquidation price.  
22 Because Debtor valued his two vehicles employing differing theories, it appears that  
23 Debtor employed his quick sale value strategically to undervalue the Porsche to keep it  
24 out of the hands of his creditors, and the court so concludes.  
25

26 During trial, as a defense to Plaintiff’s claim of intent to deceive, Debtor testified  
27 that he failed to include amended values for his assets because his attorney and Mr.  
28 Agboke from the United States Trustee’s Office advised him not to amend his Schedule

1 B. This trial testimony from Debtor was self-serving and not credible. Debtor did not  
2 provide any corroborating evidence to support his assertions. To the contrary, Agboke's  
3 credible testimony refuted Debtor's testimony. Agboke never advised Debtor not to  
4 amend his Schedule B.  
5

6 There was no credible evidence to show that Nam Le, Debtor's attorney (Le),  
7 advised Debtor not to state correctly the true values for Debtor's personal assets in his  
8 Schedule B or Amended Schedule B. Even if Le had advised Debtor to misstate the  
9 values, that still would not have provided a valid excuse for Debtor's failure to accurately  
10 value his assets on his schedules. "Generally, a debtor who acts in reliance on the  
11 advice of his attorney lacks intent required to deny him a discharge of his debt." In re  
12 Retz, 606 F.3d 1199 (quoting First Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d  
13 1339,1343). "However, the debtor's reliance must be in good faith." Id. The advice of  
14 counsel is not a defense when the erroneous information should have been evident to  
15 the debtor. Id. (citing Boroff v. Tully (In re Tully), 818 F.2d 106, 111 (1st Cir. 1987)). "A  
16 debtor cannot, merely by playing ostrich and burying his head deeply enough in the  
17 sand, disclaim all responsibility for statements which he has made under oath." In re  
18 Retz, 606 F.3d. at 1199 (quoting In re Tully, at 111). Here, Debtor clearly knew the  
19 values stated in his Amended Schedule B were incorrect. Even if Le had advised  
20 Debtor not to correct Schedule B, Debtor could not have relied on such advice in good  
21 faith when the totality of the testimonial and documentary evidence here overwhelmingly  
22 leads to the conclusion that the true values of the Porsche, the bicycles and the guitars  
23 were significantly greater than stated in his schedules and were reasonably well known  
24 to the Debtor.  
25  
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1 mutilated, or concealed or has permitted to be transferred,  
2 removed, destroyed, mutilated, or concealed—

3 (A) property of the debtor, *within one year before the*  
4 date of the filing of the petition . . . .

5 11 U.S.C. § 727(a)(2)(A) (emphasis added).

6 Retaining a secret benefit of equity in property satisfies the requirement of  
7 concealment of assets under § 727(a)(2)(A). In re Lawson, 122 F.3d 1237 (9th Cir.  
8 1997) (debtor's granting of a deed of trust to her mother supported a finding that debtor  
9 concealed property to satisfy the denial of discharge for concealment of assets under §  
10 727(a)(2)(A)). Although this court concludes that Debtor hid the true value and his  
11 substantial equity in his Porsche, bicycles and guitars when he filed his Schedule B and  
12 Amended Schedule B, the plain language of § 727(a)(2)(A) applies where concealment  
13 occurs within one year before the date of the filing of the petition. Plaintiff introduced no  
14 evidence to show that Debtor attempted to conceal the value of his property before he  
15 filed his chapter 7 petition. The concealment occurred at the time of the filing and after  
16 the filing of the petition. Therefore, the court declines to make a finding of prepetition  
17 concealment.  
18

### 19 20 **CONCLUSION**

21 Plaintiff proved by the preponderance of the evidence that (1) Debtor made false  
22 statements and omissions, (2) regarding material facts, and (3) did so knowingly and  
23 fraudulently, as required by the standard established in Khalil. The totality of the  
24 evidence and all the circumstantial evidence leads the court to conclude that the  
25 statements of value in Debtor's Schedule B and Amended Schedule B were made  
26 knowingly and fraudulently and were designed to conceal from creditors more accurate  
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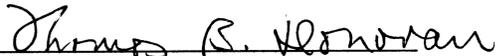
1 values and a significant amount of equity that was known to the Debtor at the time he  
2 filed his schedules.

3 Debtor's discharge is denied pursuant to 11 U.S.C. § 727(a)(4)(A).

4 The court dismisses Plaintiff's § 727(a)(2)(A) claim.

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6 IT IS SO ORDERED.

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24 Date: March 7, 2016

  
Thomas B. Donovan  
United States Bankruptcy Judge